

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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FAO-5989-2017 (O&M)
Date of decision: 08.05.2023

Renu & Others

...Appellant(s)

Vs.

Ranbir Singh & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Balbir Kumar Saini, Advocate
for the appellants.

Mr. Punit Jain, Advocate
for respondent No.2.

NIDHI GUPTA, J.

CM-19380-CII-2017

This is an application under Section 5 of the Limitation Act, 1963 read with Section 151 CPC seeking condonation of delay of 69 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN APPEAL

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.4,47,250/- granted by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as "the learned Tribunal") vide Award dated 04.10.2016 passed in MACT Case No.17 of 2014 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). By way of present

appeal, the appellants have also challenged the deduction of 50% (Rs.4,47,250/-) made to the calculated compensation of Rs.8,94,500/-, made by the learned Tribunal on account of finding of contributory negligence to the extent of 50% against the deceased. The five claimants are the widow, three minor children, and mother of deceased-Subhash Singh.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Subhash Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 20.09.2013 at about 9:30 pm due to rash and negligent driving of Tata Ace (loading three wheeler) bearing registration No.HR-58A-6810 (hereinafter referred to as “the offending vehicle”) being insured by respondent No.2; driven and owned by respondent No.1; as also rash and negligent driving on part of the deceased. Learned Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing claim petition till realisation.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia on the grounds:

a) that income of the deceased has been taken as only Rs.5,700/- per month on the basis of Minimum Wage Notification. The deceased was a mason at the time of death and earning Rs.25,000/- per month from the said vocation. Claimants had produced PW3-Jasbir Singh

who worked with the deceased and who had duly proved income of the deceased;

b) that learned Tribunal has awarded only Rs.1,00,000/- towards loss of consortium. Each of the five claimants was entitled to Rs.40,000/- (total Rs.2,00,000/-) by way of loss of consortium;

c) that nothing has been granted by learned Tribunal towards future prospects. The deceased being 39 years of age, future prospects @ 40% ought to have been granted.

4. As regards finding of contributory negligence, it is submitted by learned counsel for the appellants that as per testimony of eyewitness PW3-Jasbir Singh, the deceased along with PW3 was coming back from village Buddhi after finishing their work on their separate bicycles. It is submitted that when they reached near village Mirzapur, they parked their cycles on kacha berm of the road in order to answer call of nature. It is at this time that the offending vehicle being driven by respondent No.1 in a rash and negligent manner came from Kotla side and hit the deceased from behind. As a result of the impact, the deceased fell in sugarcane field and suffered multiple injuries, while the offending vehicle fled the spot. It is submitted that therefore, it is clear that the deceased was on kacha portion/kacha berm of the road and the entire negligence was on part of respondent No.1 and therefore, learned Tribunal had wrongly held the deceased guilty of contributory negligence. It is further submitted that in pursuance to the accident in question, even FIR No.178 dated 21.09.2013 was filed under Sections

279 and 304-A IPC on the statement made by PW3 against respondent No.1, and even challan has been presented against respondent No.1.

5. In response, it is submitted by learned counsel for respondent No.2/Insurance Company that as regards enhancement of compensation, it cannot be denied that as per judgment of Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680**, appellants are entitled to addition of 40% by way of future prospects.

6. As regards income of the deceased, it is submitted that learned Tribunal has correctly assessed notional income of the deceased as Rs.5,700/- per month on the basis of relevant Minimum Wage Notification. It is submitted that claimants led no evidence in support of their contention that the deceased was a mason and earning Rs.25,000/- per month therefrom.

7. As regards loss of consortium, it is submitted that as per judgment of Hon'ble Supreme Court in **Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others Civil Appeal Nos.2410-2412/2023**, reiterated by the Hon'ble Supreme Court in **Mehmooda Bee & Others Vs. National Insurance Co. Ltd. (@ SLP (C) No.16767 of 2022)** and **Bebi Giri Vs. National Insurance Co. Ltd. Civil Appeal No.6551 of 2022**, a total sum of Rs.40,000/- only is to be granted towards loss of consortium, and Rs.70,000/- in toto under the conventional heads.

8. As regards finding of contributory negligence by learned Tribunal, it is submitted by learned counsel that the accident in

question took place at about 9:30 pm and there was no light whatsoever in the area. It is submitted that, that is not the place to answer the call of nature, and the deceased ought to have taken reasonable precaution. It is submitted that clearly the deceased did not take reasonable care and therefore, there is no error in deduction of 50% made by learned Tribunal on account of contributory negligence on part of the deceased.

9. No other argument is raised on behalf of the parties.

10. I have heard learned counsel for the parties.

11. Facts as discernible from the record are that on the date of accident i.e. 20.09.2013 at about 9:30 pm, the deceased along with PW3-Jasbir Singh was returning from village Buddhi after finishing their work. Both, the deceased and PW3, were on their separate bicycles and when they reached near village Mirzapur, they parked their bicycles *"on the kacha berm of the road"*, to answer the call of nature. It is at this time that the offending vehicle hit into the deceased from behind as a result of which the deceased fell in the sugarcane field and suffered injuries due to which he subsequently died. In the meantime, the offending vehicle fled from the spot.

12. Perusal of the statement of PW3-Jasbir Singh (eyewitness) (available at Page 109 of the LCR) shows that PW3 has testified that:

"...The accident had taken place at 9:30 to 9:45 PM and it was pitch dark at that place. On account of accident Subash had fell down in the field of sugarcane which was at a depth of 5-6 feet from the road. Since it

was dark, I could not notice Subash and first of all I called him and thereafter I rang him up on his mobile and it is only then he was located. It took 10 minutes in that process. I was accompanying Subash. I and Subash were on separate cycles. I was never called again by police nor I visited police in connection with this case. Police had not come at the spot. I had not informed police but hospital authority had informed police...”.

(emphasis supplied)

13. Perusal of above statement shows that it has been categorically stated by PW3 (eyewitness) that the field where the deceased fell was *at a depth of 5-6 feet from the road*. Therefore, it would be reasonable to infer that the deceased was close to sugarcane fields i.e. 5-6 feet away from the road when the offending vehicle hit into him as, if the deceased was not close to the field, he would have fallen at the edge of the field, and not ‘in’ the field of sugarcane. Moreover, it is nobody’s case that the deceased was answering the call of nature at the edge of the road. In my view, therefore, it is clear that respondent No.1 travelled off the road, onto the Kaccha berm, up to the depth of 5–6 feet, to hit into the deceased. In my opinion, the only rational conclusion that can be derived from the above evidence is that respondent No.1 was driving at high speed, in a rash and negligent manner to have gotten off the road and onto the kacha berm to hit into the deceased from behind, with the impact of which the deceased fell into the sugarcane field.

14. Clearly, therefore, in these circumstances, no negligence can be attributed to the deceased as it was the offending vehicle that had veered off the road to a considerable extent for the deceased to fall into the sugarcane field which was 5-6 feet away from the road.

15. Further, admittedly, no evidence in rebuttal has been led by the respondent/Insurance Company to controvert the above said evidence. No evidence was led by the respondents to show that deceased was not on the kacha berm. Admittedly, the deceased was not in the middle of the road that he could be held liable for contributory negligence to the extent of 50%. Even further, even respondent No.1, who was the best witness, has not appeared. In view of the above facts, I hold that the finding of contributory negligence on part of the deceased to the extent of 50%, as returned by the learned Tribunal, is patently erroneous and not based on a proper appreciation of the evidence on record and therefore, deserves to be set aside.

16. In this regard, reliance may be placed upon judgment by Co-ordinate Bench of this Court in **Kamaljit Kaur & Others Vs. Satpal Singh & Others FAO-3419-2016 decided on 18.04.2022** wherein it has been held that *“Hon’ble the Supreme Court in **Civil Appeal No.8632 of 2014 titled as ‘Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and others’ decided on 11.09.2014** has held that without any direct corroborative evidence on record, the deceased cannot be said to*

be negligent." In the present case, there is no corroborative evidence whatsoever, to prove contributory negligence on part of the deceased.

17. It is reiterated that admittedly, even respondent No.1/driver of the offending vehicle who was the best witness in the present circumstances, has also not been produced. Reliance in this regard may be placed upon judgment of this Court in **National Insurance Co. Ltd. Vs. Smt. Laxmi Devi (P&H)** Law Finder Doc ID # 810050 wherein it has been held in the headnote that:

"Driver of bus was best witness to prove negligence or contributory negligence on part of deceased, but he has not been examined – No evidence that accident took place due to negligence or contributory negligence of deceased – Thus, deceased not guilty of contributory negligence.""; and:-

"Respondents No.1 Davinder Kumar, the driver of the bus was the best witness to prove the negligence or contributory negligence on the part of the deceased but he has not been examined, which raised an adverse interference against the respondents. Thus, there is nothing to disbelieve the evidence adduced by the claimants, which clearly establishes that the present accident has taken place due to rash and negligent driving of bus bearing registration No.HP-64-4201 by respondent No.1 Davinder Kumar and the plea raised by learned counsel for the appellant-Insurance Company with respect to the negligence or contributory negligence of the deceased has no substance."

18. In this regard, reference may also be made to judgment of Hon'ble Supreme Court in **Archit Saini & Another Vs. The Oriental Insurance Co. Ltd. & Others Civil Appeal Nos.7300-7309 of 2016 decided on 09.02.2018**. No judgment to the contrary has been cited by learned counsel for respondent No.2/Insurance Company.

19. Further, pursuant to the accident in question, FIR No.178 dated 21.09.2013 was registered under Sections 279 and 304-A IPC against respondent No.1/driver of the offending vehicle. Even challan has been presented in the above said FIR. It is not the case of the respondent, that respondent No.1 has filed any complaint to higher authorities about his false implication in the criminal case.

20. Accordingly, sum total of the above discussion leads to the irresistible conclusion that there was no negligence on part of the deceased and therefore, finding of contributory negligence given by the learned Tribunal is contrary to the facts and evidence on record and is accordingly, set aside.

21. As regards quantum of compensation, it was the pleaded case of the appellants before the learned Tribunal that the deceased was a mason at the time of death and earning Rs.25,000/- per month from the said vocation. However, claimants led no evidence in support of their said contention. Accordingly, learned Tribunal took income of the deceased as Rs.5,700/- per month as admissible to an unskilled labourer as per the relevant Minimum Wage Notification issued by the State of Haryana. Even now, no evidence in support of the

said contention/claimed income of the deceased, has been led by the appellants. Accordingly, notional income of the deceased is maintained at Rs.5,700/- per month as determined by the learned Tribunal.

22. Age of the deceased was determined to be 39 years 2 months on the basis of certificate (Exhibit P8) issued by the Government Primary School, Firojpur Ariyan, wherein date of birth of the deceased was mentioned as 15.07.1974. Accordingly, as per law laid down by Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) 16 SCC 680**, as the deceased was below 40 years of age, an addition of 40% is required to be made towards future prospects.

23. As the claimants were five in number, learned Tribunal correctly made deduction of 1/4th towards personal expenses. As deceased was between 36-40 years of age, learned Tribunal correctly applied multiplier of 15. Under conventional heads, learned Tribunal has granted Rs.1,00,000/- towards loss of consortium and a sum of Rs.25,000/- towards funeral expenses. There can be no doubt that as per latest judgment of the Hon'ble Supreme Court in **Bhagat Singh Rawat (supra)**, cited by learn it counsel for the respondent Insurance Company, total sum of Rs.70,000/- can be granted under conventional heads. No judgment to the contrary has been cited by learned counsel for the appellants. Accordingly, compensation payable to the appellants is re-calculated as follows:-

Heads	By MACT	By this Court
Income	Rs.5,700/- per month	Rs.5,700/- per month

Future prospects	--	(40%) Rs.5,700/- x Rs.2,280/- = Rs.7,980/-
Annual income	Rs.5,700/- x 12 = Rs.68,400/-	Rs.7,980/- x 12 = Rs.95,760/-
Deduction	(1/4 th) Rs.68,400/- - Rs.17,100/- = Rs.51,300/-	(1/4 th) Rs.95,760/- - Rs.23,940/- = Rs.71,820/-
Multiplier	(15) Rs.51,300/- x 15 = Rs.7,69,500/-	(15) Rs.71,820/- x 15 = Rs.10,77,300/-
Conventional heads	Rs.1,25,000/-	Rs.77,000/-
Total	Rs.8,94,500/- (50% of contributory negligence = Rs.4,47,250/-)	Rs.11,54,300/-

24. Needless to say, in view of above discussion, no deduction shall be made towards contributory negligence.

25. Claimants shall be entitled to interest @ 9% per annum on enhanced compensation from the date of filing the claim petition till realisation. Ratio of apportionment and mode of disbursement of compensation as determined by the learned Tribunal is maintained. Accordingly, present appeal stands **allowed** in above said terms.

26. Pending application(s) if any also stand(s) disposed of.

08.05.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No